

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

Case No. 1:19-cv-2912

Plaintiff,

v.

DANIEL BERNSTEIN and
YANA BERNSTEIN,

Defendants.

-----X

COMPLAINT

The United States of America, with the authorization of the Secretary of the Treasury and at the direction of the Attorney General of the United States, brings this action under 31 U.S.C. § 3711(g)(4)(C) to collect: (1) an outstanding civil penalty assessed against Daniel Bernstein for his failure to timely report his financial interest in foreign bank or other financial accounts, along with an accrued late-payment penalty and interest; and (2) an outstanding civil penalty assessed against Yana Bernstein for her failure to timely report her financial interest in foreign bank or other financial accounts, along with an accrued late-payment penalty and interest. In support of its complaint, the United States alleges as follows:

Jurisdiction

1. The Court has jurisdiction over this action under 28 U.S.C. §§ 1331, 1345, 1355(a).
2. Daniel Bernstein resides in Brooklyn, New York within the jurisdiction of this Court.
3. Yana Bernstein resides in Brooklyn, New York within the jurisdiction of this Court.

Facts Common to Both Counts

4. In 2002 a bank or other financial account was opened at UBS AG in Switzerland with an account number ending 6040 (“UBS Account 6040”).
5. SDL Investments, Inc., a company incorporated in the British Virgin Islands, was designated the account holder of UBS Account 6040.
6. Daniel Bernstein identified himself as the beneficial owner of the account assets when UBS Account 6040 was opened, and later in 2002 identified himself, Yana Bernstein, and their two daughters as the beneficial owners of the account assets.
7. In 2004, Daniel and Yana Bernstein opened a bank or other financial account at UBS in Switzerland, with an account number ending 4359 (“UBS Account 4359”) and with themselves designated as the account holders and beneficial owners of the account assets.
8. When the Bernsteins opened UBS Account 4359, they identified themselves as United States citizens, waived the right to invest in U.S. securities, and instructed UBS to retain all correspondence for the account for a fee.
9. Upon information and belief, in 2005 UBS Account 6040 was closed and the account funds were transferred to UBS Account 4359.
10. On February 18, 2009, the U.S. Department of Justice issued a press release announcing that UBS had entered into a deferred prosecution agreement on charges of conspiring to defraud the United States by impeding the IRS and that, as part of the agreement, UBS had agreed “to immediately provide the United States government with the identities of, and account information for, certain United States customers.”
11. By letter dated February 20, 2009, Daniel Bernstein instructed UBS to liquidate the securities in UBS Account 4359 except for certain bond investments, transfer the bonds

and cash to an account at “Bank Sal. Oppenheim jr. & Cie. (Schwiez) AG” [*sic*], and close the UBS account.

12. During at least a part of the year in 2009, Daniel and Yana Bernstein had a financial interest in bank or financial accounts at Bank Sal. Oppenheim Jr. & Cie. (Switzerland) Ltd. in Switzerland.
13. Despite having a financial interest in one or more Swiss bank or financial accounts from 2002 through 2009, Daniel and Yana Bernstein filed joint federal income tax returns for those tax years which reported on Schedule B that they did not have a financial interest in or signature authority over a financial account in a foreign country at any time during the given year.
14. During the 2010 calendar year, Daniel and Yana Bernstein had a financial interest in bank or other financial accounts at Bank Sal. Oppenheim Jr. & Cie. (Switzerland) Ltd. in Switzerland (hereinafter “Sal. Oppenheim Accounts”).
15. During 2010, the aggregate balance of the Sal. Oppenheim Accounts exceeded \$10,000.
16. Daniel and Yana Bernstein filed a joint federal income tax return (Form 1040) for the 2010 tax year.
17. The Bernsteins’ 2010 Form 1040 did not report income from the Sal. Oppenheim Accounts and did not answer the question on line 7a of Schedule B as to whether they had a financial interest in or signature authority over a financial account located in a foreign country at any time during the year.
18. An asterisk inserted at the end of line 7a on the Bernsteins’ 2010 Schedule B, as well as at other lines on their 2010 return and accompanying schedules, referenced an attachment which stated in part that the Bernsteins “invoke their rights under the Fifth Amendment of the United States Constitution not to incriminate themselves.”

Count I – Reduce FBAR Penalty Liability against Daniel Bernstein to Judgment

19. Daniel Bernstein has been a United States citizen for over twenty years.
20. Daniel Bernstein was required to report his financial interest in the Sal. Oppenheim Accounts during 2010 to the Commissioner of Internal Revenue and provide the information specified in Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (“FBAR”), on or before June 30, 2011.
21. On June 28, 2011, Daniel Bernstein submitted a Form TD F 90-22.1 for the 2010 calendar year that was incomplete, as the Form did not report any financial accounts and stated “FIFTH AMENDMENT” in the space provided for account information.
22. Daniel Bernstein failed to report his financial interest in the Sal. Oppenheim Accounts during 2010 as required under 31 C.F.R. § 1010.350 on or before June 30, 2011.
23. Daniel Bernstein’s failure to timely report his financial interest in the Sal. Oppenheim Accounts during 2010 was willful.
24. On March 2, 2015, Daniel Bernstein filed an FBAR for the 2010 calendar year which reported a separately owned account at HSBC Bank Canada and four accounts at Bank Sal. Oppenheim Jr. & Cie. (Switzerland) Ltd. jointly owned with Yana Bernstein.
25. On May 18, 2017, the IRS assessed a civil penalty (“FBAR penalty”) of \$262,288.50 against Daniel Bernstein pursuant to 31 U.S.C. § 5321 for his willful failure to timely report his financial interest in the Sal. Oppenheim Accounts during the 2010 calendar year by June 30, 2011, as required by 31 U.S.C. § 5314 and its implementing regulations.
26. By letter dated May 18, 2017, the Internal Revenue Service notified Daniel Bernstein of the FBAR Penalty assessment and demanded payment.
27. The balance due on the FBAR Penalty assessed against Daniel Bernstein, plus accrued statutory additions and interest through August 7, 2018, including a late-payment penalty

pursuant to 31 U.S.C. 3717(e)(2), is \$283,386.56. Statutory additions and interest continue to accrue from August 7, 2018.

Count II – Reduce FBAR Penalty Liability against Yana Bernstein to Judgment

28. Yana Bernstein has been a United States citizen for over twenty years.
29. Yana Bernstein was required to report her financial interest in the Sal. Oppenheim Accounts during 2010 to the Commissioner of Internal Revenue and provide the information specified in Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts, on or before June 30, 2011.
30. On June 28, 2011, Yana Bernstein submitted a Form TD F 90-22.1 for the 2010 calendar year that was incomplete, as the Form did not report any financial accounts and stated “FIFTH AMENDMENT” in the space provided for account information.
31. Yana Bernstein failed to report her financial interest in the Sal. Oppenheim Accounts during 2010 as required under 31 C.F.R. § 1010.350 on or before June 30, 2011.
32. Yana Bernstein’s failure to timely report her financial interest in the Sal. Oppenheim Accounts during 2010 was willful.
33. On March 2, 2015, Daniel Bernstein filed an FBAR for the 2010 calendar year which reported a separately owned account at HSBC Bank Canada and four accounts at Bank Sal. Oppenheim Jr. & Cie. (Switzerland) Ltd. jointly owned with Yana Bernstein.
34. On May 18, 2017, the IRS assessed a civil penalty of \$262,288.50 against Yana Bernstein pursuant to 31 U.S.C. § 5321 for her willful failure to timely report her financial interest in the Sal. Oppenheim Accounts during the 2010 calendar year by June 30, 2011, as required by 31 U.S.C. § 5314 and its implementing regulations.
35. By letter dated May 18, 2017, the Internal Revenue Service notified Yana Bernstein of the FBAR Penalty assessment and demanded payment.

36. The balance due on the FBAR Penalty assessed against Yana Bernstein, plus accrued statutory additions and interest through August 7, 2018, including a late-payment penalty pursuant to 31 U.S.C. 3717(e)(2), is \$283,386.56. Statutory additions and interest continue to accrue from August 7, 2018.

WHEREFORE, the United States requests that this Court:

- (1) enter judgment against Daniel Bernstein in the amount of \$283,386.56, plus statutory additions and interest from August 7, 2018, for his unpaid FBAR liabilities;
- (2) enter judgment against Yana Bernstein in the amount of \$283,386.56, plus statutory additions and interest from August 7, 2018, for her unpaid FBAR liabilities; and
- (3) award the United States its costs and such further relief as the Court deems just and proper.

Respectfully submitted,

RICHARD E. ZUCKERMAN
Principal Deputy Assistant Attorney General

/s/ Karen Wozniak
KAREN WOZNIAK
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 55, Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 307-1927
Facsimile: (202) 514-5238
E-mail: karen.e.wozniak@usdoj.gov

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Karen Wozniak, U.S. Dept. of Justice Tax Division, P.O. Box 55, Ben Franklin Station, Washington, D.C. 20044 (202) 307-1927

DEFENDANTS

DANIEL BERNSTEIN and YANA BERNSTEIN

County of Residence of First Listed Defendant **Kings**
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input checked="" type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
31 U.S.C. §§ 5134 and 5321

Brief description of cause:
action to obtain money judgment for penalties for failure to report interest in foreign bank or financial accounts

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
566,773.12

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

05/16/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/ Karen Wozniak

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration ☐

I, Karen Wozniak, counsel for United States of America, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

☐
☐
☒

monetary damages sought are in excess of \$150,000, exclusive of interest and costs,

the complaint seeks injunctive relief,

the matter is otherwise ineligible for the following reason Congressionally imposed penalty under Title 31 enforced by the Internal Revenue Service

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? ☐ Yes ☒ No
- 2.) If you answered "no" above:
- a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? ☐ Yes ☒ No
- b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? ☒ Yes ☐ No
- c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received: _____

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? ☐ Yes ☐ No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

☐

Yes

☒

No

*Appearing for the U.S. Department of Justice pursuant to Local Civil Rule 1.3(c)

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐

Yes

(If yes, please explain

☒

No

I certify the accuracy of all information provided above.

Signature: /s/ Karen Wozniak

Civil Action No. 1:19-cv-2912

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: